No. 11970

In the United States Circuit Court of Appeals for the Ninth Circuit

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

v.

FREDERICK I. RICHMAN AND LYDIA BLITHE RICHMAN NAGEL, APPELLEES

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF OF APPELLANT

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APPELLANT'S BRIEF

STATEMENT OF JURISDICTION

The Housing Expediter appeals from a final judgment of the United States District Court for the Southern District of California, Central Division which denied injunctive relief and decreed that plaintiff, the Housing Expediter, "take nothing" (R. 35), in an action brought to enforce compliance with both the Emergency Price Control Act of 1942 as amended (50 U. S. C. App., Secs. 901, et seq., hereinafter referred to as "the Act of 1942" or "the 1942 Act"), and the Housing and Rent Act of 1947 (50 U. S. C. App., Secs. 1881, et seq., hereinafter called "the Act of 1947" or the "1947 Act").

Jurisdiction of the District Court was invoked by Sections 205 (a), (c), and (e) (50 U. S. C. App., Secs. 925 (a), (c), and (e)) of the Act of 1942, and by Sections 206 (b) and 204 (a) (50 U. S. C. App., Secs. 1896 (b) and 1894 (a) of the Act of 1947 (R. 6–7, 8–9).

Final judgment was entered on March 19, 1948 (R. 34–35). Notice of Appeal was filed May 21, 1948 (R. 35–36). Jurisdiction of this Court is invoked under Section 128 of the Judicial Code (28 U. S. C. Sec. 225).

STATEMENT OF THE CASE

This appeal raises the substantial question whether the Court below erred in holding that the Emergency Price Control Act of 1942, as amended, did not continue in force after termination thereof on June 30, 1947, with respect to rent overcharges alleged to have been received by the defendants prior to such termination date (R. 42). Other questions are presented by the trial Court's exclusion of testimony respecting such alleged overcharges, and in failing to grant relief to plaintiff, on behalf of the United States, either by judgment for statutory damages under Section 205 (e) of the 1942 Act (*infra,* p. 21), or by restitution to tenants of the overcharges under Section 205 (a) (*Infra,* p. 21) (R. 41–43, 33). These questions and other rulings by the trial Court as a result of which plaintiff was denied any relief which the complaint prayed (R. 9–10), stem essentially from the basic determination by the Court below that the 1942 Act ceased to be in any respect operative from June 30, 1947, so that upon trial "the scope of the

evidence," as the Court held, was "limited to the status quo of the parties when the new Act of 1947 was passed and for acts between the parties from there on" (R. 42).

On June 30, 1947, the Act of 1942 expired by its terms. Section 1 (b) thereof (the savings clause), provided in effect that the provisions of the Act and all regulations thereunder "shall be treated as still remaining in force" for the purpose of sustaining any suit with respect to "offenses committed, or rights or liabilities incurred" prior to the termination date (*infra,* p. 20). On July 1, 1947, the Act of 1947 went into effect. Under this Act, authority to administer the powers, functions, and duties thereunder was conferred by Congress on the Housing Expediter, to whom rent control was transferred, and who "was retained as the official to administer the [rent control] law" (Sen. Conf. Rep., Cong. Rec. June 19, 1947, p. 7439; Sen. Rep. No. 86, 80th Cong., 1st Sess., p. 2). Section 204 (a) of the 1947 Act provides that the Housing Expediter shall administer the powers, functions, and duties as therein provided (*infra,* p. 22).

THE FACTS

The facts are substantially as follows: The rental premises here involved are located at 5165 Fountain Avenue, in Los Angeles, California (R. 8). The complaint refers to the building there situated, and containing the living units from which the defendants received rent, as the Fountain Avenue Apartments (R. 8). In the answer of defendants, such building is described as the Fountain Manor Apartment Hotel

(R. 16, 22). Prior to January 1944, the then owner of the premises, H. E. Weitz, registered the apartments in said building as controlled housing accommodations within the meaning of the Act of 1942, and the Rent Regulations issued thereunder (R. 54, 55, 56).[1] In January 1944, appellees, Frederick I. Richman and Lyda Blithe Richman Nagel (hereinafter referred to as the defendants), acquired ownership of the property and thereafter received rents from tenants of apartments (R. 8, 22, 18).[1]

The amended complaint,[2] filed October 10, 1947, was brought pursuant to Section 205 (a) of the 1942 Act and pursuant also to Section 206 (b) of the Act of 1947 (*infra*, p. 23) to enforce compliance with both Acts and the Rent Regulations issued thereunder, and for treble damages on behalf of the United States as provided by Section 205 (e) of the Act of 1942 (R. 6–7, 9). The complaint alleged in substance that the defendants had received from occupants of the said apartment housing accommodations amounts in excess of the maximum legal rents established by the said Rent Regulations (R. 8), and by such acts and practices the defendant had violated Section 4 (a) (*infra,* p. 20) of the 1942 Act and the Rent Regulation for Housing (10 F. R. 13528) issued pursuant thereto (R. 9). A schedule made a part of the complaint set

[1] Hannah E. Weitz, former owner of the rental premises, was dismissed as a party-defendant prior to trial of the action February 11, 1948 (R. 24).

[2] The action was instituted August 15, 1947, by the former Housing Expediter, Frank R. Creedon (R. 2, 6), for whom Tighe E. Woods, as Housing Expediter, was substituted as plaintiff (R. 45.)

forth the amount of overcharges alleged to have been received by the defendants, with the apartment numbers, the names of the several tenants from whom collected and the dates of such overcharges extending from the month of January 1944, to and including the month of September 1947 (R. 8, 12–13). The complaint prayed (1) for judgment under Section 205 (e) of the 1942 Act for treble the total overcharges received in excess of the maximum legal rents, (2) that the defendants be ordered to refund to the tenants thereto entitled, all amounts in excess of maximum rents established by the Act, which had not been previously refunded, and (3) that the defendants be enjoined from demanding or receiving for the housing accommodations involved, rents in excess of the legal maximum permitted under the Rent Regulation for Housing, or any other Regulations issued pursuant to the Act of 1947 (R. 9–10).

The answer of the defendants, filed November 3, 1947 (R. 24), denied that on or since July 1, 1947, the housing accommodations referred to in the complaint were subject to maximum rents under the Housing and Rent Act of 1947, or otherwise (R. 15). With reference to the schedule of alleged overcharges made a part of the complaint (R. 12–13), the answer alleged that, since June 30, 1947, certain of the apartments there listed had not been subject to any maximum rent (R. 17–19). As to certain other apartments, the answer set forth that, at various dates prior to institution of the present action, the defendants had "restored" or "repaid" to occupants thereof amounts received in excess of the monthly rent of such apart-

ments as fixed by "the then Office of Price Administrations" (R. 17, 18, 19). After the filing of the answer, a stipulation between plaintiff and defendants of January 27, 1948, amended such schedule by eliminating therefrom all items of alleged overcharges, except the following (R. 29):

Apt.	Tenant's name	Period of occupancy	Rent collected	Maximum legal rent	Amount of overcharge
407	Mrs. Russell Simpson	May 1, 1944, to Apr. 10, 1946.	$75.00 per mo	$65.00	$233.53
412	Mr. Harold Cousins	May 15, 1944, to Aug. 15, 1947.	$57.50 per mo	$47.50 per mo	380.00
				Total	$613.35

Upon the parties announcing ready for trial on February 11, 1948 (R. 41), and before the introduction of any testimony, the trial Court upon "an analysis of the two Acts" (R. 41), held "the scope of the evidence" to be "limited" to those violations arising after June 30, 1947, as earlier pointed out (*supra,* p. 23), and also that "if Congress wanted to keep the relief for past rent question in the Act of 1947, it would have said so, but they didn't" (R. 42). The lower Court accordingly sustained the contention of defendants that with respect to the alleged overcharges from the tenant of Apartment No. 407, that "There is just no violation there now," and refused to admit any evidence respecting such item (R. 43).

From the same "analysis of the two Acts" (R. 41), the trial Court determined that "If Congress intended to grant restitution for rents in the Act of 1947, it would have said so" (R. 42). After hearing evidence from both parties as to alleged overcharges on the

remaining apartment No. 412 (R. 46–58), the Court announced that the findings "will have to be for the defendants" (R. 58). From the judgment thereafter entered, which denied the issuance of an injunction and decreed that "plaintiff take nothing herein" (R. 34–35), the present appeal is taken (R. 35).

SPECIFICATIONS OF ERROR

1. The Court below erred in excluding all evidence of rental overcharges received prior to July 1, 1947, from Apartment No. 407 (R. 60).

2. The Court below erred in finding that it was without jurisdiction under Section 205 (c) and 205 (e) of the Emergency Price Control Act (Second Finding of Fact) (R. 60).

3. The Court below erred in concluding that Section 205 of the Emergency Price Control Act barred recovery of rental overcharges for Apartment No. 407 (Second Conclusion of Law) (R. 60).

4. The Court below erred in entering final judgment for defendants (R. 61).

ARGUMENT

I

The lower Court erred in refusing to give effect to the 1942 Act after the expiration date

That the Court below wholly misconceived the relief to which plaintiff was entitled under both the Emergency Price Control Act of 1942, as amended, and the Housing and Rent Act of 1947 (R. 6, 9), is disclosed by the following rulings at the commencement of the trial (R. 41):

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> The COURT. The question presented at this time is whether the Act of 1942, under which the present action is brought, applies, and is exclusive, or whether the Act of 1947 applies and is exclusive.

In referring to "the Act of 1942" the Court said (R. 41–42):

> Under that Act acts were barred after the expiration of one year, so it seems that the acts here done before the 1947 Act was adopted, were beyond one year and Congress only kept alive acts done after the adoption of the Act of 1947.
>
> The scope of the relief here sought is provided for and governed by the Act of 1947 which limits acts performed after its adoption and providing for injunctive relief to preserve future acts and pertains to the enforcement of the Act of 1947 and preserves the status quo of the parties. * * *
>
> The Act of 1942 was dead on June 30th, 1947, and there was no more law in the country. Then Congress took up the matter and said, "We will extend it to only," as I construe the Act, "to acts in the future and to grant injunctive relief and hold the parties in status quo" and not for the recovery of back rents.

Such rulings of the trial Court were clearly erroneous. The lower Court in the first place overlooked that the amended complaint was brought not only under Sections 205 (a) and (e) of the Act of 1942, but also pursuant to Section 206 (b) of the Act of 1947. In the second place the Court below overlooked the fact that, under Section 1 (b) of the Act, liabilities arising thereunder are saved for redress. This contention will be discussed below.

1. The Savings Clause of the Act of 1942 continued such Act in force with respect to alleged violations thereof prior to the termination date

It is clear that the lower Court disregarded completely the savings clause (Section 1 (b)), of the Act of 1942 by which the provisions thereof are expressly "treated as still remaining in force for the purpose of sustaining" any suit or action with respect "to offenses committed, or rights or liabilities incurred," prior to the termination date (*infra,* p. 20).

This Court in *Gorden* v. *Porter,* 156 F. 2d 799 (C. C. A. 9th), certiorari denied, 329 U. S. 763, gave effect to such savings clause in holding that the question whether the 1942 Act had been violated prior to the termination date, had not become moot. The Supreme Court and many other Circuit Courts of Appeal have also held that in view of Section 1 (b) liabilities incurred under the Act prior to its expiration were not thereafter washed out. As the Supreme Court said in *Fleming* v. *Mohawk Wrecking and Lumber Co.,* 331 U. S. 111, at pps. 114, 119:

> The Act was amended in 1946 to provide for its termination not later than June 30, 1947, saving, however, rights and liabilities incurred prior to the termination date. * * *
>
> Liabilities incurred prior to the lifting of controls are not thereby washed out. *United States* v. *Hark,* 320 U. S. 531, 536; *Utah Junk Co.* v. *Porter,* 328 U. S. 39, 44; *Collins* v. *Porter,* 328 U. S. 46, 49. And Congress has explicitly provided that accrued rights and liabilities under the Emergency Price Control Act are preserved whether or not suit is started prior to the termination date of the Act.

See also, Woods v. *Hills,* decided May 10, 1948, 334 U. S. 210, 214, rehearing denied, 334 U. S. 856; *Porter* v. *American National Bank and Trust Company,* 161 F. 2d 504 (C. C. A. 7th); *Fleming* v. *Goodwin,* 165 F. 2d 334, 338 (C. C. A. 8th), certiorari denied, 68 S. Ct. 1338; *Quirk* v. *United States,* 161 F. 2d 138 (C. C. A. 8th); *150 East 47th Street Corporation* v. *Porter,* 156 F. 2d 541 (Em. Ct. App.); *Standard Kosher Poultry, Inc.* v. *Clark,* 163 F. 2d 430 (Em. Ct. App.); *Bartlett* v. *United States,* 166 F. 2d 920 (C. C. A. 10th).

The effect of the trial Court's erroneous ruling in holding the 1942 Act no longer in effect was to eliminate completely plaintiff's claim for relief as to any alleged overcharges prior to June 30, 1947. Under Section 205 (e) of the Act, plaintiff was entitled to judgment on behalf of the United States for the statutory damages therein provided (*infra,* p. 21). Under Section 205 (a) (*infra,* p. 21), and as determined in *Porter* v. *Warner Holding Company,* 328 U. S. 395, plaintiff was also entitled to judgment directing the defendants to restore to the tenants all amounts collected in excess of the lawful maximum rent. The complaint specifically prayed such relief (R. 9–10). Respecting both Apartments 407 and 412, overcharges prior to June 30, 1947, were alleged (R. 29). By refusing to give any effect to the 1942 Act after its expiration date, the lower Court clearly committed error. Other rulings of the trial Court which follow from this basic erroneous determination will be briefly considered in argument hereafter following.

2. The Court below erred in holding as a matter of law that plaintiff had no cause of action with respect to alleged overcharges received by defendants from the tenant of Apartment 407, prior to June 30, 1947, and in excluding at trial any evidence of such overcharges

The amended complaint among other alleged overcharges by defendants set forth the following item (R. 29):

> Apt. 407. Tenant's name, Mrs. Russell Simpson; Period of occupancy, May 1, 1944, to April 10, 1946; Rent collected, $75.00 per mo.; Maximum legal rent, $65.00; Amount of overcharge, $233.53.

However "at the commencement of the trial" the Court below determined "That is a matter of law the plaintiff had no cause of action on account of the alleged violations relating to Apartment No. 407" (Recitals of Findings of Fact and Conclusions of Law, R. 30). The error of reaching such conclusion is very clearly disclosed by the following trial proceedings (R. 42).

After holding that "The Act of 1942 was dead on June 30th, 1947," and that any rent control thereafter did not extend to "the recovery of back rents" (R. 42), the lower Court made the following further rulings before the introduction of any testimony (R. 42):

> * * * my conclusion, gentlemen, is that in this present action the scope of the evidence is limited to the status quo of the parties when the new Act of 1947 was passed and for acts between the parties from there on.
>
> It appears clear to me that if Congress wanted to keep the relief for past rent question in the Act of 1947, it would have said so, but

> they didn't. They dropped it and that Act has gone out of existence. It is terminated. Now, there is nothing before us other than acts committed since the 1947 Act—injunctive relief, in other words.
>
> If the tenants were in possession of the property at the time of the 1947 Act were complying with their contracts or with the regulations the Act of 1947 would protect them in preventing the landlord from throwing them out. That is the only question here.

By such ruling, the Court below again disregarded the savings clause of the 1942 Act which preserved plaintiff's right to relief as the complaint prayed (R. 9–10), upon proof of overcharges between May 1, 1944, and April 10, 1946, which the above item alleged (R. 29). In addition to the recovery of treble damages under Section 205 (e) of the 1942 Act, the complaint also prayed that the defendants be ordered to restore to the tenant all amounts collected in excess of the maximum legal rent (R. 9–10). As later pointed out in the present brief (*infra,* p. 16), susch right of restitution under Section 205 (a) of the Act, and for the benefit of the tenant alone, is wholly separate and distinct from the right to statutory damages accorded the Housing Expediter, and on behalf of the United States, under Section 205 (e). To the enforcement of such right the limitation of one year "from the date of the occurrence of the violation" in which to institute an action for recovery, as provided in Section 205 (e), presents no bar (*infra,* p. 21). Plaintiff therefore was entitled to introduce evidence of the overcharges alleged.

However upon being informed that the tenants were still in possession of the housing accommodations (R. 43), the trial Court continued to disregard any application of the savings clause of the 1942 Act by the following ruling and concurrence in the statement of defendants' counsel (R. 43):

> The COURT. The scope of this inquiry here, if they [the tenants] have complied with the Act of 1947, would go only to the granting of injunctive relief and maintaining their possession if they desire it.
>
> That is the conclusion I have reached, gentlemen, so you may proceed with your evidence.
>
> MR. LYNCH. That has eliminated entirely from consideration the Russell Simpson matter in Apartment No. 407. There is just no violation there now.
>
> The COURT. The plaintiff is granted an exception to the rule of the court.

Plaintiff was prepared to offer proof by the testimony of three witnesses "relative to rent collections before June 30, 1947," and respecting the alleged overcharges as to the particular Apartment 407, but in view of the Court's rulings as stated, it was stipulated that "no formal tender of that testimony need be made," and such witnesses were excused (R. 45–46).

In thus disregarding the savings clause of the 1942 Act by holding that no cause of action existed as to the claim for rent overcharges received prior to June 30, 1947, and in refusing to admit any evidence in proof thereof, the Court below was clearly in error.

3. The Court below erred in holding that no jurisdiction of the action was conferred under Sections 205 (c) and 205 (e) of the Act of 1942

In Finding of Fact 2 (R. 31), the lower Court made the determination above stated that no jurisdiction of the action was conferred under Sections 205 (c) and 205 (e) of the Act of 1942. This was error. Section 205 (c) of the 1942 Act provides that the District Courts shall have jurisdiction of criminal proceedings for violation of Section 4 thereof, and concurrently with State Courts, "of all other proceedings under Section 205" (*infra,* p. 21). The complaint alleged the bringing of the present action "pursuant to Section 205 (a) to enforce compliance" with such Act and "for treble damages * * * pursuant to Section 205 (e)" (R. 6). The complaint further alleged that jurisdiction of the District Court "is conferred" by "Sections 205 (c) and 205 (e)" (R. 7). Section 205 (e) confers upon the Price Administrator the right to bring an action for the statutory damages there provided if the buyer of a commodity or the person from whom rent overcharges are exacted fails to institute an action for such recovery within thirty days from the date of the occurrence of the violation (*infra,* p. 21). The complaint specifically set forth that each of the tenants therein alleged to have been overcharged had failed to institute any action under such Section 205 (e), and that more than thirty days had elapsed since occurrence of the violations (R. 8). Under the savings clause of the 1942 Act, jurisdiction of the present action existed, and the contrary finding by the Court below was clearly erroneous.

4. The lower Court erred in holding that the provisions of "Section 205 of the Emergency Price Control Act of 1942, as amended," barred recovery of alleged rental overcharges as to Apartment No. 407

The second Conclusion of Law by the trial Court states the above determination (R. 33). It is somewhat difficult to ascertain upon what basis such conclusion was reached. Section 205 (a) of the 1942 Act pursuant to which the present action was brought (R. 6), provides no limitation period. On the other hand, this Section expressly authorizes the Price Administrator, (to whom the Housing Expediter is the successor), to make application in the appropriate court for an order enforcing compliance with the Act, and that upon a showing of violation as therein provided, "a permanent or temporary injunction, restraining order, or *other order* shall be granted without bond" (*infra,* p. 21). [Italics added.]

In holding that under the Act of 1942, "acts were barred after the expiration of one year," and that "Congress only kept alive acts done after the adoption of the Act of 1947" (R. 41), the Court below not only disregarded the savings clause of the 1942 Act, but also completely overlooked the right of plaintiff to have entered an "other order" as Section 205 (a) provided, compelling the defendants to make restitution to the tenants of all amounts collected prior to June 30, 1947, in excess of the maximum legal rental. The overcharges alleged to have been received from the tenant of Apartment 407 extended over the period from May 1, 1944, to April 10, 1946, and the complaint expressly prayed for such restitution (R. 9–10). But the trial Court further held

that "there is nothing before us other than acts committed since the 1947 Act—injunctive relief, in other words" (R. 42–43). The Court below thus entirely lost sight of plaintiff's right to the restitution of rentals already illegally exacted as distinguished from an injunction to restrain only future rent collections.

Considering Section 205 (a) of the 1942 Act, the Supreme Court held in *Porter* v. *Warner Holding Company, supra* (p. 10), that "An order for the recovery and restitution of illegal rents may be considered a proper 'other order,'" either as "an equitable adjunct to an injunction decree" (328 U. S. p. 399), or "as an order appropriate and necessary to enforce compliance with the Act" (328 U. S. p. 400). In connection with the second basis for equitable relief, the Court went on to say that (at p. 400):

> Section 205 (a) anticipates orders of that character, although it makes no attempt to catalogue the infinite forms and variations which such orders might take. The problem of formulating these orders has been left to the judicial process of adapting appropriate equitable remedies to specific situations. Cf. *Phelps Dodge Corp.* v. *Labor Board,* 313 U. S. 177, 194. In framing such remedies under Section 205 (a), courts must act primarily to effectuate the policy of the Emergency Price Control Act and to protect the public interest while giving necessary respect to the private interests involved. The inherent equitable jurisdiction which is thus called into play clearly authorizes a court, in its discretion, to decree restitution of excessive charges in order to give effect to the policy

> of Congress. *Clark* v. *Smith,* 13 Pet. 195, 203.

The Supreme Court thus determined that by express language of the Act under which plaintiff brought the present action that restitution may be awarded as an equitable remedy separate and apart from an injuction decree or as an adjunct to such decree. And by the savings clause of the 1942 Act the right to such relief as to overcharges collected prior to the expiration date of June 30, 1947, was expressly preserved. In observing that "The Supreme Court in the *Porter* case * * * was construing acts under the Act of 1942" (R. 41), the Court below apparently referred to *Porter* v. *Warner Holding Company, supra,* but failed to follow such decision by holding that under such Act restitution was available to plaintiff as the complaint prayed.

In *Creedon* v. *Randolph,* 165 F. 2d 918 (C. C. A. 5th), where restitution of rent overcharges was sought by the Housing Expediter under Section 205 (a) of the 1942 Act, the Court said (165 F. 2d p. 920):

> It is a remedy which may be had in addition to the others set up in the Act, and an order of restitution may be granted with or without a prohibitory injunction.

Also, in *Bowles* v. *Skaggs,* 151 F. 2d 819 (C. C. A. 6th), the right to the relief of restitution was sustained separate and apart from any injunctive relief as to acts in the future.

Moreover, the right to restitution under Section 205 (a) is of a distinctly different nature from the right to statutory damages which the complaint prayed

(R. 9) under Section 205 (e), and is unaffected by the limitation of one year for bringing suit as such Section provides (*infra,* p. 21). The distinction between the two remedies is clearly pointed out in *Blood* v. *Fleming,* 161 F. 2d 292 (C. C. A. 10th) where the Court said (at p. 295):

> Section 205 (a) creates a cause of action separate from that set out in Section 205 (e). It confers broad equitable powers upon the court giving it power to grant injunctions, enter orders of restitution, or any other equitable order conducive to proper enforcement of the provisions of the Act. * * * Whether an action may be maintained under this section is not controlled by the one year limitation set up in Section 205 (e).

See too, *Warner Holding Co.* v. *Creedon,* 166 F. 2d 119 (C. C. 8th); *Creedon* v. *Randolph,* supra.

It follows that the Second Conclusion of law of the trial Court was clearly erroneous in holding that Section 205 (a) of the 1942 Act barred the recovery of alleged overcharges as to Apartment No. 407 (R. 33).

II

The Court below erred in entering final judgment for the defendants

The error of the trial Court in determining "as a matter of law" that "plaintiff had no cause of action on account of the alleged violations relating to Apartment No. 407" (R. 30), was no less harmful by reason of the Court's finding that the defendants had not engaged in any act or practice which violated the Housing and Rent Act of 1947, or regulations issued

pursuant thereto (Third Conclusion of Law, R. 33). Such Act and regulations were effective only from July 1, 1947, but the overcharges on account of which it was held no cause of action existed were alleged to have been collected prior to that date and while the 1942 Act was still in effect (R. 29). By the lower Court's ruling that proof of such overcharges was not embraced within "the scope of the evidence" at trial (R. 42, 43), plaintiff was deprived of relief which the complaint specifically prayed (R. 9–10), and which the savings clause of the 1942 Act preserved. From the trial Court's failure to give effect to such clause, it follows that there was no legal basis upon which judgment could properly be entered for the defendants.

CONCLUSION

The judgment should be reversed and the cause remanded, with directions to award to plaintiff the relief prayed, upon proof of the overcharges as to Apartment 407 which the complaint alleged.

Respectfully submitted.

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APPENDIX

Emergency Price Control Act of 1942, as Amended (50 U. S. C. App., Secs. 901, et seq.)

Section 1 (b). The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.

Section 4 (a). It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

SECTION 205 (a). Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

SECTION 205 (c). The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act. * * *

SECTION 205 (e). If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In any action under this subsection, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges if the defendant proves

that the violation of the regulation, order, or price schedule in question was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation.

For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. * * *

HOUSING AND RENT ACT OF 1947 (50 U. S. C. APP., SECS. 1881, ET SEQ.)

SECTION 204 (a). The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until February 29, 1948.

SECTION 204 (b). During the period beginning on the effective date of this title and ending on the date this title ceases to be in effect, no person shall demand,

accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order, make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: * * *

SECTION 206 (a). It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

SECTION 206 (b). Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

RENT REGULATION FOR HOUSING (10 F. R. 13536), ISSUED PURSUANT TO EMERGENCY PRICE CONTROL ACT OF 1942, AS AMENDED

SECTION 2 (a). *Prohibition against higher than maximum rents*—(a) *General prohibition.*—Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall demand or receive any rent for or in connection with

the use or occupancy on and after the effective date of regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. Lower rents than those provided by this regulation may be demanded or received.

SECTION 4 (a). *Maximum rents.*—Maximum rents (unless and until changed by the Housing Expediter as provided in section 5) shall be:

(a) *Rented on maximum rent date.*—For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date.

RENT REGULATION FOR HOUSING (12 F. R. 4331), ISSUED PURSUANT TO HOUSING AND RENT ACT OF 1947

SECTION 2 (a). *Prohibition against higher than maximum rents*—(a) *General prohibition.*—Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall offer, demand or receive any rent for or in connection with the use or occupancy on and after the effective date of this regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing.

SECTION 4 (a). *Maximum rents*—(a) *Maximum rents in effect on June 30, 1947.*—The maximum rent for any housing accommodation under this regulation (unless and until changed by the Expediter as provided in section 5) shall be the maximum rent which was in effect on June 30, 1947, as established under the Emergency Price Control Act of 1942, as amended, and the applicable rent regulation issued thereunder, except as otherwise provided in this section.

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